

**Performance Bond -
Dual Obligee**

**U.S. Department of Housing
and Urban Development**
Office of Housing

OMB Approval No. 0000-0000
(exp. 00/00/00)

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CONTRACTOR/PRINCIPAL (Name and Address):

OWNER (Name and Address):

LENDER (Name and Address):

SURETY (Name and Principal Place of Business):

PROJECT (Name, FHA Number and Location):

CONSTRUCTION CONTRACT:

Date:

Amount:

BOND:

Date:

Amount:

RIDERS TO THIS BOND: ____ Yes ____ No

This Performance Bond-Dual Obligee ("Bond") is issued simultaneously with a Payment Bond ("Payment Bond") issued with respect to the Project. As used herein, "Obligees" shall mean Owner, Lender and the additional obligee(s), if any, identified in a Rider to this Bond and "Obligee" shall mean any of the Obligees.

1. Contractor has entered into a construction contract with Owner for the construction of the above-named Project. The construction contract (as the same may be now or hereafter amended by change order or otherwise) is made a part hereof by reference, and is hereinafter referred to as the "Contract."

2. Lender has agreed to lend to Owner a sum of money to be secured by a mortgage, deed of trust, or security deed on the Project and to be used in making payments under the Contract, and desires protection as its interests may appear, in event of default by Contractor under the Contract.

3. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, unto Owner and unto Lender, its successors and assigns, as their respective interests may appear, as OBLIGEES, in the sum of _____ Dollars (\$_____), for the performance of the Contract. Any approved increase in the total Contract price would increase the obligation of the Obligors accordingly.

4. The condition of this obligation is such that, if Contractor shall perform all the undertakings, covenants, terms conditions and agreements of the Contract on its part to be performed, and fully indemnify and save harmless Obligees from all costs and damages which they may suffer by reason of failure to do so, and fully reimburse and repay Obligees all expenses which any of the Obligees may incur in making good any such default, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

5. Surety shall not be liable under this Bond to the Obligees, or any of them, unless the said Obligees, or any of them, make payments to the Contractor in accordance with the terms of the Contract as to payments, and perform all the other

obligations to be performed under the Contract. However, Surety shall not assert a failure by the Obligees, or any of them, to make payments or perform obligations under the Contract unless each of the Obligees has been given written notice by Surety of any such failure and a reasonable period of time (but in no event less than thirty (30) days from receipt of said notice), in which to cure such failure.

6. Surety agrees that any right of action that any of Obligees herein may have under this Bond may be assigned, without the consent of Contractor or Surety, to the Secretary of Housing and Urban Development, acting by and through the Federal Housing Commissioner, and that such assignment will in no manner invalidate or qualify this instrument.

7. The aggregate liability of Surety hereunder to the Obligees or their assigns is limited to the penal sum above stated, and Surety, upon making any payment hereunder, shall be subrogated to, and shall be entitled to an assignment of, all rights of the payee, either against Contractor or against any other party liable to the payee in connection with the loss which is the subject of the payment. Notwithstanding the foregoing, no amounts paid to Owner without the written consent of Lender shall reduce the liability of Surety to Lender under this Bond.

8. Any suit, action or proceeding by reason of any default whatever shall be instituted within two years after the date the Owner declares the Contractor in default of the Contract. If this limitation is deemed to be in contravention of any controlling law, this Bond is deemed amended so as to be equal to the minimum period of limitation permitted by such law.

9. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

10. Notice to the Surety, Owner, or Contractor shall be served by mailing the same by registered mail or certified mail, postage prepaid, to the address shown on this Bond or to such other address as may have been previously specified by the recipient in a notice given in accordance herewith.

SIGNED and SEALED THIS _____ day of _____, 20__.

Witness as to Contractor:

CONTRACTOR:

By: _____

Name and Title (Printed)

SURETY:

By: _____

Name and Title (Printed)

Project Name: _____
 Project Number: _____

ADDITIONAL OBLIGEE RIDER

(Additional obligee only allowed with prior HUD approval as indicated below.)_

1. This Additional Obligatee Rider is attached to and made a part of that certain Performance Bond-Dual Obligatee (the "Performance Bond"), dated _____, 20__, executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligatees, in the sum of _____ (\$_____) with respect to the Project referenced above.
2. All of the terms, conditions and provisions of the Performance Bond are hereby incorporated herein by this reference as if fully set forth herein.
3. All defined terms as set forth in the Performance Bond shall have the same meanings herein.
4. _____ is hereby added to the Performance Bond as an additional named Obligatee.
5. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Performance Bond, including especially but without limitation, the aggregate liability of the Surety as described in paragraph 3 of the Performance Bond.

Signed and sealed this _____ day of _____, 20__.

Witness as to Contractor:

CONTRACTOR: _____

By: _____

 Name and Title (Printed)

:

SURETY: _____

By: _____

 Name and Title (Printed)

Approved by the United States Department of Housing and Urban Development

By: _____

Project Name: _____
 Project Number: _____

ADDITIONAL SURETY RIDER

(Additional surety only allowed with prior HUD approval as indicated below.)

6. This Additional Surety Rider is attached to and made a part of that certain Performance Bond-Dual Obligee ("Performance Bond"), dated _____, 20____, executed and delivered by _____, as Contractor, and _____, as Surety, in favor of Obligees, in the sum of _____ (\$_____) with respect to the Project referenced above.
7. All of the terms, conditions and provisions of the Performance Bond are hereby incorporated herein by this reference as if fully set forth herein.
8. Except as set forth in paragraph 5 below, all defined terms as set forth in the Performance Bond shall have the same meanings herein.
9. _____ ("Additional Surety") is hereby added to the Performance Bond as an additional named surety.
10. Each surety and additional surety (hereinafter collectively called "Surety") is held and firmly bound, jointly and severally, onto Obligees. Further, each undersigned Surety binds itself in the aforesaid full sum, "jointly and severally," as well as "severally" for the purpose of allowing joint action or singular actions against any or all of them in the full amount of this Performance Bond and for all other purposes each Surety binds itself, jointly and severally with the Contractor, for the payment of the full sums above stated. All references in the Performance Bond to "Surety" shall include the Additional Surety.
11. Nothing herein shall alter or affect any of the terms, conditions and other provisions of the Performance Bond, including especially but without limitation, the aggregate liability of the Surety as described in paragraph 3 of the Performance Bond.

[Remainder of page intentionally left blank.]

SIGNED AND SEALED this _____ day of _____, 20____.

Witness as to Contractor:

CONTRACTOR:

By: _____

Name and Title (Printed)

SURETY:

By: _____

Name and Title (Printed)

Approved by the United States Department of Housing and Urban Development

By: _____
